

IDEIA/ARTICLE 7 SIDE-BY-SIDE COMPARISON CHART

IDEIA requirements currently not addressed in Article 7 or for which IDEIA prescribes a higher standard or requirement than that currently contained in Article 7 that will have to be implemented	IDEIA requirements for which Article 7 currently provides a higher standard or requirement. In general, Article 7 will have to be amended before implementing certain federal requirements.
<p><u>DEFINITIONS</u> (not currently included in Article 7)</p> <p>Core Academic Subject: English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. 20 U.S.C. § 1401(4) of the IDEIA and 20 U.S.C. § 7801(11) of the Elementary and Secondary Education Act (ESEA), also known as the <i>No Child Left Behind Act of 2001</i> (NCLB).</p> <p>Elementary School: Adds “charter school” to the definition. 20 U.S.C. § 1401(6). “Charter school” is also added to the definition of “secondary school.” <i>See</i>, 20 U.S.C. § 1401(27).</p> <p>Highly Qualified: every special education teacher must be highly qualified as defined in 20 U.S.C. § 7801(23) of the ESEA, except that the term includes the requirements specified below and includes the option for certain special education teachers to meet the requirements of 20 U.S.C. §7801(23) by meeting the requirements as set forth below.</p> <p>All Special Education Teachers</p> <ul style="list-style-type: none"> • Must have full state certification as a special education teacher and hold a special ed license • Certification and licensure requirements cannot be waived on emergency, temporary, or provisional basis • Must have at least a bachelor’s degree <p>Special Education Teachers teaching core academic subjects exclusively to students who will be assessed on alternate achievement standards</p> <ul style="list-style-type: none"> • Must meet applicable requirements of 20 U.S.C. § 7801 of ESEA for any elementary, middle or high school teacher (regardless of whether new or not new to the profession) OR • Must meet requirements of 20 U.S.C. § 7801(23)(B) or (C) (for elementary teachers) or for middle or high school, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the state, needed to effectively teach to those standards. 	<p>Assistive technology device: The IDEIA specifically excludes from the definition a surgically implanted device or its replacement. 20 U.S.C. § 1401(1)(B). Such items are also excluded from the definition of “related service.” <i>See</i>, 20 U.S.C. § 1401(26). Such items are not specifically excluded from Article 7’s definitions of assistive technology device or service, or from the definition of related service. However, if a device must be "surgically implanted," then it constitutes a medical service that is not a required related service provided at no cost to the parent. <i>See</i>, 511 IAC 7-28-1(e), which states that medical services for the purpose of diagnosis and evaluation shall be considered related services <i>only if</i> necessary for diagnosis and evaluation of a medically related disability and provided by a physician with an unlimited license to practice medicine.</p> <p>Parent: The new definition includes: (A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent); (B) a guardian (but not the State if the child is a ward of the State); (C) an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or (D) an individual assigned as a surrogate parent. 20 U.S.C. § 1401(23). Pursuant to 511 IAC 7-24-2(c), a foster</p>

Special Education Teachers teaching 2 or more core academic subjects exclusively to students with disabilities

- Must meet applicable requirements of 20 U.S.C. §7801 of ESEA for any elementary, middle or high school teacher (regardless of whether new or not new to the profession) AND
- (For not new teacher) Must demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as required for any elementary, middle, or high school teacher who is not new OR
- (For new SE teacher who is HQ in math, language arts, or science) Must demonstrate competence in the other core academic subjects the teacher teaches in the same manner as is required or an elementary, middle, or high school teacher under 20 U.S.C. § 7801 (23)(c)(ii)

20 U.S.C. § 1401(10).

Comment: The IDOE/DEL is developing additional information on highly qualified teachers and the high uniform state standards of evaluation (HOUSSE) for distribution to LEAs.

Homeless children (IDEIA employs the McKinney-Vento Act definition for “homeless children and youth” from 42 U.S.C. § 11434a(2)(A),(B)):

(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of 42 U.S.C. § 11302(a)(1)); and

(B) includes—

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of 42 U.S.C. § 11302 (a)(2)(C);

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children (as such term is defined in 20 U.S.C. §6399) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

20 U.S.C. § 1401(11).

parent who meets the educational surrogate parent (ESP) qualifications must be assigned as a student’s ESP; the foster parent is not considered the parent in the absence of assignment as the student’s ESP.

Limited English Proficient (IDEIA employs the ESEA definition for “limited English proficient from 20 U.S.C. § 7801(25)): when used with respect to an individual, means an individual —

- (A) who is aged 3 through 21;
 - (B) who is enrolled or preparing to enroll in an elementary school or secondary school;
 - (C)(i) who was not born in the United States or whose native language is a language other than English;
 - (ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and
 - (II) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
 - (iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
 - (D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual —
 - (i) the ability to meet the State's proficient level of achievement on State assessments described in §1111(b)(3);
 - (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or
 - (iii) the opportunity to participate fully in society.”
- 20 U.S.C. § 1401(18).

Related Services: Excludes a medical device that is surgically implanted, or replacement of such device. 20 U.S.C. § 1401(26).

Serious bodily injury (IDEIA employs the definition for “serious bodily injury” from 18 U.S.C. § 1365(h)(3)): bodily injury which involves -

- (A) a substantial risk of death;
 - (B) extreme physical pain;
 - (C) protracted and obvious disfigurement; or
 - (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- 20 U.S.C. § 1415(k)(7)(D).

Universal Design (IDEIA employs the definition of “universal design” contained in the Assistive Technology for Individuals with Disabilities Act at 29 U.S.C. § 3002(19)): a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies. 20 U.S.C. § 1401(35).

<p>The current definition of Transition services at 511 IAC 7-17-75 is modified, but not substantively changed, by 20 U.S.C. § 1401(34)(B). In addition to the criteria already included in 511 IAC 7-17-75, the IDEIA also requires that the services be designed with <u>a results-oriented process that is focused on improving the academic and functional achievement of the student to facilitate the student’s movement to post-secondary activities</u> and that they be <u>based on a variety of things including the student’s strengths</u>.</p>	
<p><u>STATE ADMINISTRATION</u></p> <p>Rulemaking [IC 20-19-2-16]: Article 7 must conform to the purposes of IDEIA. SEA must identify to the LEAs and the Secretary of the U.S. Department of Education any state-imposed conditions not required federal law. The SEA is to minimize the number of regulations and policies. 20 U.S.C. § 1407(a).</p> <p><u>PRIVATE SCHOOLS OR FACILITIES</u></p> <p>Child find responsibilities [511 IAC 7-19-1(b)]: Child find activities for students with disabilities unilaterally enrolled in private schools within a school corporation’s boundaries must continue to be comparable to the child find activities carried out for public school students with disabilities. IDEIA adds the following requirements to the private school student child find process:</p> <ul style="list-style-type: none"> • <u>In calculating the proportionate amount of Federal funds, the local educational agency, after timely and meaningful consultation with representatives of private schools, shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local educational agency.</u> 20 U.S.C. § 1412(a)(10)(A)(i)(II). • <u>State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended.</u> 20 U.S.C. § 1412(a)(10)(A)(i)(IV). • <u>The child find process shall be designed to ensure the equitable participation of parentally placed private school students with disabilities and an accurate count of such children.</u> 20 U.S.C. § 1412(a)(10)(A)(ii)(II). • <u>The cost of carrying out the child find process, including individual evaluations, may not be considered in determining whether a local educational agency has met its obligations.</u> 20 U.S.C. § 1412(a)(10)(A)(ii)(IV). • <u>Such child find process shall be completed in a time period comparable to that for other students attending public schools in the local educational agency.</u> 20 U.S.C. § 1412(a)(10)(A)(ii)(V). 	

In addition, each LEA shall maintain in its records and provide to the SEA the number of private school students evaluated, the number determined eligible, and the number of students served. 20 U.S.C. § 1412(a)(10)(A)(i)(V).

Consultation with private schools [511 IAC 7-19-1(d) and (e)]: Public schools must continue to consult with representatives of private schools in a timely and meaningful way. To ensure the timely and meaningful consultation, this, IDEIA requires that the consultation also include parents of parentally placed private school students during the design and development of special education and related services for the children. 20 U.S.C. § 1412(a)(10)(A)(iii).

The consultation with parents and private school representatives must also include:

- the child find process and how parentally placed private school students suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process. 20 U.S.C. § 1412(a)(10)(A)(iii)(I).
- the determination of how the proportionate amount of Federal funds available to serve parentally placed private school students with disabilities, including how the amount was calculated. 20 U.S.C. § 1412(a)(10)(A)(iii)(II).
- the consultation process among the LEA, the private school officials, and representatives of parents of privately placed students, including how the process will operate throughout the school year to ensure that parentally placed private school students identified through the child find process can meaningfully participate in special education and related services. 20 U.S.C. § 1412(a)(10)(A)(iii)(III).
- how, where, and by whom special education and related services will be provided for private school students, including a discussion of the types of services, and how services will be apportioned if insufficient funds. 20 U.S.C. § 1412(a)(10)(A)(iii)(IV).
- how, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services, the LEA shall provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract . 20 U.S.C. § 1412(a)(10)(A)(iii)(V).

Once the consultation has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools. If no written affirmation is forthcoming within a reasonable amount of time, the LEA must forward documentation of the consultation process to the SEA. [20 U.S.C. § 1412(a)(10)(A)(iv)]

If a private school official believes the LEA did not engage in meaningful and timely consultation or did not give due consideration to the views of the private school, he/she may file a complaint to

Consultation with private schools 511 IAC 7-19-1(d) and (e): The IDEIA requires the consultation with private school officials and parent representatives to include the following:

- How, where, and by whom special education and related services will be provided for private school students, including a discussion of the types of services, and how services will be apportioned if insufficient funds [20 U.S.C. § 1412(a)(10)(A)(iii)(IV)]

511 IAC 7-19-1(f) and (g) require the CCC to meet to discuss the services to private school students with disabilities. 511 IAC 7-19-1(a) applies the rule to all students with disabilities unilaterally enrolled in private schools. Although 511 IAC 7-19-1(c), (j), and (k) describe the proportionate amount requirements, schools must make services available to all private school students, even if expending more than the proportionate amount.

<p><u>the SEA. [20 U.S.C. § 1412(a)(10)(A)(v)(I)] Such complaint must provide the basis of the LEA's non-compliance, and the LEA must forward the appropriate documentation to the SEA. If the private school official is dissatisfied with the SEA's decision the private school official may complain to the Secretary of the USDOE, and the SEA must provide the appropriate documentation. [20 U.S.C. § 1412(a)(10)(A)(v)(II)]</u></p> <p>Services provided to private school students [511 IAC 7-19-1]: <u>The IDEIA requires that special education and related services provided to private school students , including materials and equipment, must be secular, neutral, and non-ideological. 20 U.S.C. § 1412(a)(10)(A)(vi)(II).</u></p> <p>Reimbursement</p>	<p>Reimbursement to parents for unilateral enrollment of student in private school [511 IAC 7-19-2]: IDEIA makes it discretionary for a hearing officer or a judge to reduce or deny reimbursement if the parent failed to provide the requisite notice of the unilateral enrollment of the student in private school if the parent is illiterate or cannot write in English, or if providing such notice would likely result in emotional harm to the student. 20 U.S.C. § 1412(a)(10)(C)(iv)(II). 511 IAC 7-19-2(e) does not allow such discretion, and precludes the hearing officer or the court from reducing or denying reimbursement if the failure to provide notice is the result of, among other things, the parent's inability to read or write in English or if providing the notice would result in physical or emotional harm to the student. 511 IAC 7-19-2(d) describes the situations in which the hearing officer and the court have discretion to reduce or deny the reimbursement.</p>
<p><u>PROGRAM PLANNING AND EVALUATION</u></p>	<p>Comprehensive System of Personnel Development [511 IAC 7-20-3]: The IDEIA eliminated the CSPD requirement formerly found at 20 U.S.C. § 1412(a)(14). 511 IAC 7-20-3 continues to require that each LEA implement a comprehensive system of personnel development.</p>
<p><u>GENERAL ADMINISTRATION OF PROGRAMS</u></p> <p>Special Education Program Personnel [511 IAC 7-21-2(a)]: In addition to the current</p>	

requirement that all personnel employed or contracted to provide or supervise the provision of special education or related services shall be appropriately licensed or certified, the IDEIA requires that personnel have the content knowledge and skills to serve students with disabilities. [20 U.S.C. § 1412(a)(14)(A)] In addition, all teachers must be highly qualified as defined in the NCLB and IDEIA [20 U.S.C. §§ 1412(a)(14)(C) and 1413(a)(3)], and the LEA must take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to students with disabilities. 20 U.S.C. § 1412(a)(14)(D).

NEW: The IDEIA does not create a private right of action if the staff person is not highly qualified, but it also does not prevent a parent from filing a complaint with the SEA about staff qualifications. 20 U.S.C. § 1412(a)(14)(E) and 20 U.S.C. § 1401(10)(E).

Medication administration [511 IAC 7-21-8]: In addition to current requirements on medication administration, LEA personnel are prohibited from requiring a student to obtain a prescription for a substance covered under the Controlled Substances Act (20 U.S.C. 801 et seq.) as a condition of attending school, receiving an educational evaluation, or receiving special education and related services. 20 U.S.C. § 1412(a)(25)(A). However, nothing prevents LEA personnel from consulting or sharing classroom-based observations with parents regarding a student's academic and functional performance or behavior in the classroom or school regarding the need for evaluation for special education and related services. 20 U.S.C. § 1412(a)(25)(B).

State and Local Assessments [511 IAC 7-21-9]: The SEA or the LEA (in the case of a district-wide assessment) shall, to the extent feasible, use universal design principles in developing and administering any assessments. 20 U.S.C. § 1412(a)(16)(E).

Alternate assessments must be aligned with the State's challenging academic and achievement standards. 20 U.S.C. § 1412(a)(16)(C)(ii)(I).

If a state has adopted alternate academic and achievement standards, alternate assessments must measure achievement of students against the alternate academic and achievement standards. 20 U.S.C. § 1412(a)(16)(C)(ii)(II).

The SEA or the LEA (in the case of a district-wide assessment) shall report numbers and performance of children with disabilities participating in regular assessments, including the number of those children who were provided accommodations in order to participate in those assessments, and the number of children participating in alternate assessments and alternate assessments using alternate standards. 20 U.S.C. § 1412(a)(16)(D).

<p><u>LOCAL EDUCATION AGENCY ELIGIBILITY</u></p> <p>Charter Schools [IC 20-24-4 <i>et seq.</i>]: <u>A charter school that is a public school of an LEA shall serve children with disabilities attending the charter school in the same manner as the LEA serves children with disabilities in its other schools.</u> 20 U.S.C. § 1413(a)(5). In Indiana, a charter school that is a public school of an LEA is a “conversion charter school.”</p> <p>Migratory Children [IC 20-19-2-10]: <u>LEAs are to cooperate to ensure linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging among the States health and education information regarding such children.</u> 20 U.S.C. § 1413(a)(9). This is also part of NCLB’s “Coordination of Migrant Education Activities” found at 20 U.S.C. § 6398.</p> <p>NEW - Early Intervening Services: LEAs are permitted to use not more than 15% of Part B funds to provide services to students K-12 (emphasis on K-3) who have not been identified as eligible for IDEIA services but who need additional academic/behavioral support in order to succeed in a general education environment. Services can include scientifically based literacy instruction. Students served under this program are not entitled to FAPE. 20 U.S.C. §1413(f).</p>	
<p><u>PROCEDURAL SAFEGUARDS:</u></p> <p>Notice of Procedural Safeguards [511 IAC 7-22-1]:</p> <p><u>IDEIA permits schools to include a copy of the Notice on the school’s website (but not as a substitute for providing the notice to individual parents).</u> 20 U.S.C. § 1415(d)(1)(B).</p> <p>NEW: <u>If made available by the LEA, the parent may elect to receive any notice under this section via electronic mail.</u> 20 U.S.C. § 1415(n). <i>Comment: LEAs are encouraged to get a parent’s election of electronic notices in writing.</i></p> <p>Content of Notice of Procedural Safeguards [511 IAC 7-22-1(e)]: In addition to current notice content requirements under Article 7, Notice must now include information on <u>the two-year time period in which to file a request for a due process hearing, the opportunity for the school to resolve the matter, the availability of mediation to resolve any dispute, and the time period for filing a civil action.</u> 20 U.S.C. § 1415(d)(2)(E) and (K).</p>	<p>Providing Notice of Procedural Safeguards: IDEIA limits the occasions on which the Notice of Procedural Safeguards must be provided (once a year, upon initial referral or a parent’s request for an evaluation, upon a request for a due process hearing, and upon a parent’s request). 20 U.S.C. § 1415(d)(1)(A). Article 7 requires the Notice to be provided on additional occasions, and schools must continue to provide the Notice at the seven events identified in 511 IAC 7-22-1(d) -- initial referral, notification of CCC meeting, reevaluation, request for due process hearing, date of decision to place student in IAES, date expulsion charges filed, and notification of proposed placement or denial of placement.</p>

EDUCATIONAL SURROGATE PARENTS

Appointing an educational surrogate parent [511 IAC 7-24-1]:

- In addition to the LEA's ability to appoint an ESP, for a child who is a ward of the state, the court overseeing the child's care may appoint an educational surrogate parent for the child as long as the person meets requisite criteria for an ESP. 20 U.S.C. § 1415(b)(2)(A)(i).
- **NEW:** The school must appoint an ESP for an unaccompanied homeless youth (a youth not in the physical custody of a parent or guardian). 20 U.S.C. § 1415(b)(2)(A)(ii).
- **NEW:** The school must make reasonable efforts to assign an ESP within 30 days of the date the school determines an ESP is needed. 20 U.S.C. § 1415(b)(2)(B).

IDENTIFICATION AND EVALUATION

Child Find [511 IAC 7-25-2]: Includes homeless children and wards of state. 20 U.S.C. § 1412(a)(3)(A).

Note Regarding Child Find: IDEIA reaffirms that it does not require a child to be classified (labeled) with a particular disability category as long as such child, by reason of his or her disability, needs special education and related services. 20 U.S.C. § 1412(a)(3)(B).

Education Evaluations: In General [511 IAC 7-25-3]:

- **NEW:** The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered an evaluation for eligibility for special education. 20 U.S.C. § 1414(a)(1)(E).
- **Procedures to ensure tests and evaluation materials [511 IAC 7-25-3(e)(1)]:** IDEIA eliminated the language that an evaluation must be done in a student's native language or other mode of communication and replaced it with evaluations must be provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless not feasible to so provide or administer. 20 U.S.C. § 1414(b)(3)(A)(ii).

- **Assurances for standardized tests [511 IAC 7-25-3(g)]:** The criteria previously applied to standardized tests (standards of validity, reliability, and administration by trained personnel in accordance with the applicable instructions) now apply to all assessment and other evaluations materials. 20 U.S.C. § 1414(b)(3)(A)(iii-v).
- **Evaluation must include variety of assessments [511 IAC 7-25-3(i)]:** Evaluation must include a variety of assessments and information gathering procedures designed to provide relevant functioning and developmental information. IDEIA has added that academic information be part of the information gathered. 20 U.S.C. § 1414 (b)(2)(A).
- **Termination of eligibility due to receipt of diploma or reaching age limit [511 IAC 7-25-3(k)]:** No evaluation is required to terminate eligibility due to graduation from a secondary school with a standard diploma or aging out, but the school must provide the student with a summary of the student's academic achievement and functional performance, including recommendations on how to assist the student in meeting the student's post-secondary goals. 20 U.S.C. § 1414(c)(5)(B)(ii).

Initial Educational Evaluation [511 IAC 7-25-4]

- **NEW:** An initial evaluation may be requested by the LEA, the parent, the SEA or other state agency. 20 U.S.C. § 1414(a)(1)(B).
- **Review to determine what data necessary [511 IAC 7-25-4(d)(2)]:** The CCC must identify what additional data, if any, are needed to determine (A) whether the student is a student with a disability, (B) the present levels of academic achievement, developmental needs and educational needs of the student, (C) whether the student needs special education and related services. 20 U.S.C. § 1414(c)(1)(B)(i-iii).

Reevaluation [511 IAC 7-25-6]

- **Review of existing information [511 IAC 7-25-6(d)]:** The CCC must identify what additional data, if any, are needed to determine (1) whether the student continues to be a student with a disability, (2) the present levels of academic achievement, related developmental needs, and the educational needs of the student, (3) whether the student continues to need special education and related services, and (4) whether any additions or modification to the special education program are needed. 20 U.S.C. § 1414(c)(1)(B)(i-iv).

If CCC determines no additional data needed [511 IAC 7-25-6(g)]: If the CCC determines no additional data are needed, the LEA must notify the parent: (1) of the determination and the reason

Evaluation timeline and exceptions [511 IAC 7-25-4(b)]: The IDEIA provides a default timeline of 60 days in which to complete an initial educational evaluation. 20 U.S.C. § 1414(a)(1)(C)(i). **The 60-instructional day timeline for completing an initial evaluation, contained in 511 IAC 7-25-4(b), remains in effect.** IDEIA also identifies exceptions to the timeline rule (when a student moves to a new LEA after initiating evaluation request in previous LEA or if the parent repeatedly refuses to present the student for evaluation). 20 U.S.C. § 1414(a)(1)(C)(ii). **Article 7 does not provide for any exceptions to the 60-instructional day timeline.**

Reevaluations [511 IAC 7-25-6]: IDEIA requires a reevaluation at least once every three years, but no more than once a year, unless the parent and the LEA agree otherwise. The LEA must ensure a reevaluation is conducted if the LEA determines that the educational or related service needs, including improved academic achievement and functional performance, warrant the

<p>therefore, and (2) the right to request an assessment to determine whether the student continues to be eligible <u>and to determine the student's educational needs</u>. 20 U.S.C. § 1414(c)(4). The LEA is not required to conduct an assessment unless requested by the parents.</p>	<p>reevaluation or if requested. 20 U.S.C. § 1414(a)(2)(A) and (B). While this is not much different from the current requirements of Article 7, reevaluations must continue to be conducted in accordance with 511 IAC 7-25-6.</p>
<p><u>ELIGIBILITY CRITERIA</u></p> <p>In general [511 IAC 7-26-1]: In determining eligibility, a student shall not be determined eligible if the determinant factor for such eligibility is: (1) lack of <u>appropriate instruction in reading, including in the essential components of reading instruction, specifically, explicit and systematic instruction in: (A) phonemic awareness, (B) phonics, (C) vocabulary development, (D) reading fluency, including oral reading skills, and (E) reading comprehension strategies</u>; (2) lack of instruction in math, or (3) limited English proficiency. 20 U.S.C. § 1414(b)(5).</p> <p>Learning disability [511 IAC 7-26-8]: The IDEIA states that an <u>LEA shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning</u>. 20 U.S.C. §§ 1401(30) and 1414(b)(6)(A). In addition, <u>the committee may use a process that determines if the student responds to scientific, research-based intervention as part of the evaluation procedures</u>. 20 U.S.C. § 1414(b)(6)(B). CCCs are not required to comply with the requirement of 511 IAC 7-26-8 to determine a severe discrepancy exists between the student's academic achievement and normal or near normal potential in order to determine the student is a student with a learning disability. CCCs would use the discrepancy model and determine whether the student has a condition that adversely affects educational performance.</p>	
<p><u>DETERMINATION OF SPECIAL EDUCATION SERVICES</u></p> <p>Case Conference Committee</p> <p>CCC consideration of general and special factors [511 IAC 7-27-4(c)]: IDEIA adds <u>the academic, developmental, and functional needs of the student</u> as additional factors to be considered by the CCC. 20 U.S.C. § 1414(d)(3)(A).</p>	<p>Case Conference Committee Participants [511 IAC 7-27-3]: The IDEIA permits a member of the CCC to be excused from attending all or part of a CCC meeting if the parent and LEA agree, in writing, that the CCC member does not need to attend, and the excused participant submits to the parent and the CCC, prior to the CCC meeting, written input into the development of the IEP. CCC members to be excused by mutual agreement of the</p>

Changing the IEP

Consent

Parental consent [511 IAC 7-27-5(f)]: If a parent refuses to consent to special education and related services, the LEA may not provide services and may not use due process to override lack of parental consent 20 U.S.C. § 1414(a)(1)(D)(ii)(II). *Comment: Even though 20 U.S.C. § 1414(a)(1)(D)(ii)(II) does not limit this scenario to the initial placement, the proposed federal regulations interpreting IDEIA do limit this to the initial provision of services. See, proposes 34 CFR § 300.300(b).* If the parent refuses to consent to the receipt of services or fails to respond to the LEA's request for such consent, the LEA is not considered in violation of the requirement to make a FAPE available to the student, nor is the LEA required to convene a CCC meeting or develop an IEP. 20 U.S.C. § 1414(a)(1)(D)(ii)(III).

Individualized education program components [511 IAC 7-27-6(a)]

- **Present levels:** IEP must include a statement of the student's present levels of academic achievement and functional performance. . . .20 U.S.C. § 1414(d)(1)(A)(i)(I).
- **Measurable annual goals** – Goals must now include academic and functional goals. 20 U.S.C. § 1414(d)(1)(A)(i)(II).
- **Statement of special education and related services** – The IEP must include a statement of the special education and related services, based on peer-reviewed research to the extent practicable, to be provided to the student. 20 U.S.C. § 1414(d)(1)(A)(i)(IV).
- **Statement of any individual appropriate accommodations necessary for assessments** – The IEP must include a statement of the individual and appropriate accommodations

parent and the school. 20 U.S.C. § 1414(d)(1)(C). **Requisite CCC participants as identified in 511 IAC 7-27-3 must continue to participate in CCC meetings.**

CCC meetings - Changing the IEP [511 IAC 7-27-4(c)]: The IDEIA permits the school and the parent to agree to changes, subsequent to the annual CCC meeting, and develop a written document to amend/modify the current IEP in the absence of convening the CCC. 20 U.S.C. § 1414(d)(3)(D). **Schools and parents must continue to meet in CCC meetings in order to change a student's IEP.** IDEIA also permits other changes to the IEP to be made either by the CCC or solely by the parent and the school, by amending the IEP rather than redrafting the entire document and requires a copy to be given to the parent upon request. 20 U.S.C. § 1414(d)(3)(F). **511 IAC 7-27-4(c) controls as does 511 IAC 7-27-5 with regard to a copy of the IEP.**

Benchmarks and short-term objectives [7-27-6(a)(2)]: The IDEIA eliminated the requirement for including benchmarks or short-term objectives as part of each annual goal included in a student's IEP, except for students who are being assessed on an alternate assessment against alternate achievement standards as permitted by 20 U.S.C. § 1414(d)(1)(A)(i)(I)(cc) and (II). **IEPs must continue to include benchmarks or short-term objectives as part of the annual measurable goals pursuant to 511 IAC 7-27-6(a)(2).**

<p>that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments. 20 U.S.C. § 1414(d)(1)(A)(i)(VI)(aa). Alternate assessment – CCC must continue to identify the reasons the statewide or local assessment is not appropriate for the student, <u>as well as the reason the chosen alternate assessment is appropriate for the student.</u> 20 U.S.C. § 1414(d)(1)(A)(i)(VI)(bb).</p> <p>Intrastate IEP Implementation [511 IAC 7-27-7(c)(3) and 7-27-4(a)(5)]: A child with and IEP in effect who transfers within the same state is entitled to have the IEP implemented, with the LEA providing <u>comparable services</u> in consultation with the parent until the LEA adopts the IEP or implements Federal and State procedures for review and revisions of the IEP. 20 U.S.C. §1414(d)(2)(C)(i)(I). Article 7 currently requires the receiving district to implement the sending district’s IEP.</p> <p>Interstate IEP [511 IAC 7-27-7(c)(2) and 7-27-4(a)(5)]: Where a child with an IEP in effect transfers from a school district from another State, the receiving LEA shall provide the child with a FAPE, including <u>comparable services</u> in consultation with the parent until the LEA conducts an evaluation, if necessary, and develops a new IEP, if appropriate. Article 7 currently requires the CCC to convene within 10 instructional days of enrollment when a student with an IEP from another Indiana school district transfers in. This requirement applies to both intrastate and interstate IEPs. 20 U.S.C. § 1414(d)(2)(C)(i)(II).</p> <p>IDEIA <u>also requires the “receiving” school to take reasonable steps to promptly obtain the student’s records from the previously attended school, and the previously attended school must take reasonable steps to promptly respond with the requested documents.</u> 20 U.S.C. § 1414(d)(2)(C)(ii). <i>Comment: This is also required in State law. See, I.C. § 20-19-2-10.</i></p> <p>Community-supported and residential services [511 IAC 7-27-12] <u>The SEA must determine if the schools and facilities to which LEAs refer/place students with disabilities meet the standards that apply to SEAs and LEAs</u> [20 U.S.C. § 1412(a)(10)(B)(ii)]</p>	<p>Multi-year IEP [511 IAC 7-27-7(d)]: The IDEIA allows an SEA to apply for permission to demonstrate the use of multi-year IEPs. [20 U.S.C. § 1414(d)(5)]. IEPs cannot be implemented for more than 12 months, absent operation of the stay-put provision.</p>
<p><u>RELATED SERVICES; TRANSITIONS; TRANSFER OF RIGHTS</u></p> <p>Related services [511 IAC 7-28-1]</p> <p>NEW: <u>Interpreting services</u> [511 IAC 7-28-1(p)(1)] <u>School nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child.</u> [511 IAC 7-28-1(m)] 20 U.S.C. § 1401(26).</p>	<p>Related service specifically excludes a medical device that is surgically implanted or the replacement of such device. 20 U.S.C. § 1401(26)(A) and (B). <i>Comment: see note in Definitions section - assistive technology device.</i></p>

<p>Transition from Part C to Part B [511 IAC 7-28-2]: In addition to the requirements of 511 IAC 7-28-2, <u>the Part C Services coordinator or other Part C representative shall be invited to the initial CCC meeting for a student previously served in Part C, if the parent so requests.</u> 20 U.S.C. § 1414(d)(1)(D). At the transition planning CCC meeting, <u>the CCC must consider the individualized family service plan (IFSP).</u> 20 U.S.C. § 1414(d)(2)(B).</p> <p>Transition to adult life [511 IAC 7-28-3]: In addition to the requirements of 511 IAC 7-28-3(b) for the statement of needed transition services, the transition plan <u>must include appropriate measurable postsecondary goals based on age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills and the transition services (including courses of study) needed to assist the student in reaching those goals.</u> 20 U.S.C. § 1414(d)(1)(A)(i)(VIII). See also the requirements of 20 U.S.C. § 1414(c)(5)(B)(ii) requiring the school to <u>provide the student with a summary of the student's academic achievement and functional performance, including recommendations on how to assist the student in meeting the student's post-secondary goals.</u></p>	<p>Using IFSP as IEP: The IDEIA allows the individualized family service plan (IFSP) to serve as the IEP if doing so is <u>consistent with State policy and agreed to by the parent and the school.</u> 20 U.S.C. § 1414(d)(2)(B). Indiana's policy does not permit the IFSP to be used as the IEP.</p> <p>Transition planning at age 16 [511 IAC 7-28-3]: IDEIA eliminated the requirement for transition planning beginning when a student turns 14 and replaced it with planning at the age of 16. It also eliminated the requirement of a statement of interagency linkages or responsibilities. 20 U.S.C. § 1414(d)(1)(A)(i)(VIII). 511 IAC 7-28-3(a) continues to require that transition planning begin at age 14 or earlier if determined appropriate by the CCC, and 511 IAC 7-28-3(b) continues to require, as appropriate, a statement of interagency responsibilities or any needed linkages or both.</p>
<p><u>DISCIPLINE PROCEDURES</u></p> <p>NEW: <u>School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change of placement for a student with a disability who violates the student code of conduct.</u> 20 U.S.C. § 1415(k)(1)(A).</p> <p>NEW: <u>Not later than the date on which the decision to take disciplinary action is made, the LEA shall notify parents of the decision and of all procedural safeguards accorded under this section.</u> 20 U.S.C. § 1415(k)(1)(H). <i>Comment: This provision relates only to disciplinary action that results in a change of placement (as in 34 CFR 300.519). See 511 IAC 7-29-1(k), 7-29-2(b), and 7-29-3(a) for disciplinary actions that constitute a change of placement. See also, 511 IAC 7-17-13(b).</i></p>	<p>Manifestation determination [511 IAC 7-29-6]: IDEIA has limited the questions to be considered by the CCC in determining if a student's misconduct is a manifestation of the student's disability to: <u>(1) is the conduct in question caused by or does it have a direct and substantial relationship to the student's disability or (2) is the conduct in question the direct result of the school's failure to implement the IEP?</u> 20 U.S.C. § 1415(k)(1)(E). 511 IAC 7-29-6(d)(2) continues to require the CCC to consider the four questions identified in determining if the conduct is a manifestation of the student's disability. If the CCC determines that the conduct is a manifestation of the student's disability, the CCC must conduct an FBA</p>

<p>Interim alternative educational setting – weapons and drugs [511 IAC 7-29-3(a)]: The IDEIA adds <u>the offense of inflicting serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the SEA or LEA</u> to those for which a student may be placed in an IAES. 20 U.S.C. § 1415(k)(1)(G).</p> <p>Protections for students not yet eligible -- School deemed not to have knowledge [511 IAC 7-29-8(c)]: In addition to the conditions under which a school is not deemed to have knowledge, <u>the school shall not be deemed to have knowledge that a student is a student with a disability if the parent has not allowed an evaluation of the student or has refused special education and related services.</u> 20 U.S.C. § 1415(k)(5)(C).</p>	<p>or review an existing BIP. 20 U.S.C. § 1415(k)(1)(F). Because of the requirements of 511 IAC 7-29-5, this would have occurred prior to or concurrently with the manifestation determination CCC meeting. It is not dependent on a finding that the behavior was a manifestation of the student’s disability.</p> <p>Length of time in an IAES [511 IAC 7-29-3(a)]: The IDEIA limits the length of time of a student’s placement in an IAES to <u>45 school days</u>, which is longer than the time currently permitted under Article 7. 20 U.S.C. § 1415(k)(1)(G). The 45-calendar day limit of 511 IAC 7-29-3(a) remains in effect.</p> <p>Protections for students not yet eligible</p> <ul style="list-style-type: none"> • School deemed to have knowledge [511 IAC 7-29-8(b)]: IDEIA expanded upon the current situations in which the school will be deemed to have knowledge that a student is a student with a disability to include: <u>the teacher or other LEA personnel has expressed specific concerns about a pattern of behavior demonstrated by the child</u> directly to the director of special education or to other supervisory personnel of the LEA. 20 U.S.C. § 1415(k)(5)(B)(iii). However, 511 IAC 7-29-8(b) is broader and does not require this degree of specificity in what the LEA personnel have to report.
<p><u>DUE PROCESS PROCEDURES:</u></p> <p>Mediation</p> <ul style="list-style-type: none"> • Mediation agreement [511 IAC 7-30-1(g)]: Any agreement reached in mediation must continue to be put in writing. Additional requirements are that this written agreement: <u>(1) is legally binding, (2) must state that all discussions occurring during the process shall be confidential and not used as evidence in any subsequent due process or civil proceeding and</u> 	

(3) must be signed by the parent and the public agency representative. The agreement is enforceable in any court of competent jurisdiction. 20 U.S.C. § 1415(e)(2)(F).

The LEA or the SEA may establish procedures to offer parents and schools that choose not to participate in mediation the opportunity to meet with a disinterested third party to discuss the benefits of mediation. 511 IAC 7-30-1(i). 20 U.S.C. § 1415(e)(2)(B).

Complaints [511 IAC 7-30-2]: No changes with regard to complaints. IDEIA's reference to "complaints" is to due process hearing requests. 511 IAC 7-30-2 and 34 CFR 300.660 *et seq.* address complaint investigations for alleged procedural violations pursuant to 20 U.S.C. §1221e-3 (EDGAR), and not the IDEA.

Due Process Hearings

- **Statute of limitations [New]** -- 20 U.S.C. § 1415(f)(3)(C) imposes a two-year statute of limitations on a request for a due process hearing. Exceptions to the two-year statute of limitations for the parent include the school making specific misrepresentations it had resolved the matter or the school withholding information that was required to be provided to the parent. 20 U.S.C. § 1415(f)(3)(D).
- **Letter requesting a due process hearing [511 IAC 7-30-3(c)]** – The letter requesting the due process hearing must still comply with the requirements of 511 IAC 7-30-3(c), and if the request involves a homeless child, the letter must provide contact information for the child. 20 U.S.C. § 1415(b)(7)(A).
- **Prior written notice [New]** – When a parent files a due process hearing request and the school has not provided the parent with prior written notice regarding the subject matter of the parent's hearing request, the school must send the parent a response within 10 days of receipt of the hearing request, that includes:
 - (1) An explanation of why the LEA proposed or refused to take the action raised in the request
 - (2) A description of other options the CCC considered and the reasons they were rejected
 - (3) A description of each evaluation procedure, assessment, record, or report the LEA used as the basis for proposing or refusing the action
 - (4) A description of the factors that is relevant to the agency's proposal or refusal.20 U.S.C. § 1415(c)(2)(B)(i)(I).

Sending the prior written notice pursuant to this section does not preclude the school

from asserting that the parent's request for due process hearing is non-compliant with the notice requirements. 20 U.S.C. § 1415(c)(2)(B)(i)(I).

- **Response to party's request for a due process hearing [New]** – Within 10 days of receipt of the due process hearing request, the non-complaining party must send a written response to the request for a hearing, specifically addressing the issues raised in the request for a hearing. 20 U.S.C. § 1415(c)(2)(B)(ii).
- **Non-complaining party's notice to IHO and the other party that the complaining party's request for due process hearing is non-compliant with the notice requirements [New]** – A party's request for a due process hearing will be deemed sufficient unless the non-complaining party notifies the hearing officer and the other party in writing that it believes the letter requesting the hearing does not comply with the requirements of 1415(b)(7)(A). 20 U.S.C. § 1415(c)(2)(A). If the non-complaining party believes the other party's request does not comply with the requirements, it must notify the hearing officer and the complaining party in writing within 15 days of receipt of the hearing request of the alleged deficiencies. 20 U.S.C. § 1415(c)(2)(C). The hearing officer has 5 days to make a determination of the sufficiency of the due process hearing request and immediately notify the parties in writing of his or her determination. 20 U.S.C. § 1415(c)(2)(D).
- **Amending or adding issues to a due process hearing request [New]** – The party making the request for a due process hearing can't amend the request unless:
 - (1) The non-complaining party provides written consent to such amendment and is given the opportunity to resolve the matter through a meeting held in accordance with 20 U.S.C. § 1415(f)(1)(B) OR
 - (2) The hearing officer grants permission to the complaining party to amend the issues, but such permission cannot be granted within the last 5 days prior to the hearing. 20 U.S.C. § 1415(c)(2)(E)(i).If an amended due process hearing request is permitted and filed, the timeline begins again upon the filing of the amended request, including the resolution meeting described in 1415(f)(1)(B). 20 U.S.C. § 1415(c)(2)(E)(ii).
- **Resolution meeting [New]** – Before a hearing can be conducted, the school must convene a meeting with the parents and relevant members of the CCC who have specific knowledge of the facts alleged in the hearing request. The meeting must: (1) be held within 15 days of receipt of the due process request; (2) include a public agency representative with decision-making authority; (3) not include an attorney for the school unless the parent is accompanied by an attorney; and (4) allow the parents to discuss the facts that form the basis of the hearing request and provide the school the opportunity to resolve the matter. The meeting must be

held unless the parent and the school agree in writing to waive such a meeting OR the parties agree to use mediation. 20 U.S.C. § 1415(f)(1)(B)(i).

If the school has not resolved the matter to the parent's satisfaction within 30 days of receipt of the hearing request, the due process hearing may occur, and all the applicable timelines commence at this point. 20 U.S.C. § 1415(f)(1)(B)(ii).

If the matter is resolved at the resolution meeting, the parties must execute a legally binding agreement that is: (1) signed by both the parent and the public agency representative and (2) is enforceable in a court of competent jurisdiction. 20 U.S.C. § 1415(f)(1)(B)(iii).

A party has 3 business days after executing the agreement to void the agreement.
20 U.S.C. § 1415(f)(1)(B)(iv).

- **Hearing officer's decision [511 IAC 7-30-3(r)]** -- The hearing officer's decision must be made on substantive grounds based on a determination of whether the student received a free appropriate public education. If procedural violations are alleged, the hearing officer may find the student did not receive a free appropriate public education ONLY if the procedural deficiencies:
 - (1) Impeded the student's right to a free appropriate public education
 - (2) Significantly impeded the parent's opportunity to participate in educational decision making regarding the provision of a free appropriate public education OR
 - (3) Deprived the student of educational benefits.The hearing officer is not precluded from requiring the school to comply with procedural requirements. 20 U.S.C. § 1415(f)(3)(E).
- **Hearing officer qualifications [511 IAC 7-30-3(g)]** – in addition to those already included in 511 IAC 7-30-3(g), a hearing officer must:
 - (1) have knowledge of and the ability to understand the provisions of the statute and regulations and the legal interpretations by state and federal courts
 - (2) have knowledge and ability to conduct hearings in accordance with appropriate standard legal practice
 - (3) have the ability to render and write decisions in accordance with appropriate standard legal practice20 U.S.C. § 1415(f)(3)(A).

COMMENT: Due process hearing timelines are CALENDAR days. The timelines for providing prior written notice, a response to the request for a hearing, and providing notice that a request does not comply with the stated requirements begin upon the

receipt of the request for hearing by the IDOE. The 45-day timeline within which the due process hearing must occur does not begin until the earliest of the following: completion of the resolution session, written waiver of the resolution session, or thirty (30) calendar days from receipt of the hearing request.

Due Process Appeals

- **Attorneys' fees [511 IAC 7-30-4(p)]:** In addition to attorney's fees to prevailing parents, the LEA or SEA may seek attorney's fees against a parent's attorney if the parent's attorney requests a hearing or files a subsequent cause of action that is frivolous, unreasonable, or without foundation or if the parent's attorney continued to litigate after the litigation clearly became frivolous. 20 U.S.C. § 1415(i)(3)(B)(i)(II). The SEA or LEA may also seek attorney's fees from the parent's attorney or the parent if the request for a hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or needlessly increase the cost of litigation. 20 U.S.C. § 1415(i)(3)(B)(i)(III).

Attorneys' Fees

- **Fees unavailable for certain activities [511 IAC 7-30-6(e)]:** Attorney's fees may not be claimed for the resolution sessions required by the IDEIA. 20 U.S.C. § 1415(i)(3)(D)(iii).

Expedited due process hearings

Court review of decision [511 IAC 7-30-4(n)]: IDEIA provides a 90-day timeline for appealing a BSEA decision to court unless a timeline is already established. 20 U.S.C. § 1415(i)(2)(B). **The 30-day timeline established in 511 IAC 7-30-4(n) controls for Indiana.**

Expedited due process hearings [511 IAC 7-30-5]: IDEIA continues to require expedited hearings in the limited situations currently identified and requires the hearings to be conducted within 20 school days of the request with the decision rendered within 10 school days after the hearing. 20 U.S.C. § 1415(k)(4)(B). **The situations identified in 511 IAC 7-30-5(a) and the shorter timelines contained in 511 IAC 7-30-5(b) continue to control for expedited hearings. However, the opportunity for administrative appeal to the Board of Special Education Appeals under 511 IAC 7-30-5(d) and the corresponding time line may exceed the time frame established under IDEIA. Accordingly, there would be no administrative appeal.**